IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 190 OF 2004.

Shri Sebastiao Fernandes,
r/o Goidal or Goindal,
Paingini, Canacona. ... Petitioner.

Versus

1. Smt. Chitrakala alias Pramila
   Purshottam Phal Desai,
   r/at H. No. 136, Velvada,
   Poiguinim, Taluka Canacona.
2. Smt. Dumentina Gonsalves,
   r/at Goindol, Poinguinim,
   Taluka Canacona. ... Respondents.

Mr. A.D. Bhobe, Advocate for the Petitioner.

Mr. S.M.S. Usgaonkar, Advocate for the Respondent No. 1.

Coram : S.A. BOBDE, J.

Date : 17th June 2004.

ORAL JUDGMENT.

Rule. Heard forthwith by consent.

2. This petition is directed against the Judgment, dated 10th September 2003, in Miscellaneous Civil Appeal No. 23 of 2000 filed by the original appellant/respondent no. 1 herein. By the impugned Judgment, disposing off the common Appeals, the learned appellate Court had granted an injunction to the respondent no. 1 as prayed for.

3. It appears that the respondent no. 1 had approached the trial Court, inter alia, with a prayer clause for injunction restraining the original

defendants/petitioner and respondent no. 2 herein from interfering with the suit property, which the petitioner and respondent no. 2 claim tenancy in respect of the cashew trees in the suit property. The trial Court refused the injunction on two occasions. Respondent no. 1 filed appeals against both the Orders, which had been decided by the common Judgment impugned herein. A perusal of the impugned Judgment shows that the appellate Court had granted an injunction restraining the petitioner and respondent no. 2 from interfering with the suit property on the basis that they have not produced a single land receipt on record exhibiting the tenancy of the cashew trees. The appellate Court has observed that the document on record pertains to the declaration of toddy tapping and the declaration does not show that the petitioner was tenant of the suit property. The appellate Court found from the evidence on record that only the father of the petitioner was allowed to perform toddy tapping with respect to the coconut trees, the number of which vary from year to year.

4. The learned counsel for the petitioner strongly urged this Court to consider a document written in Marathi signed by one person on behalf of Anjani Gaonkar, who is the sister-in-law of the respondent no. 1. The letter, dated 15th February 1989, shows that the

petitioner had deposited cashew apples weighing 225 kilograms but the said deposit is not in respect of rent for the trees. Ex-facie this finding of the appellate Court does not suffer from any error of law apparent on the face of the record. In fact, an examination of the document shows that it does not purport to be a receipt for rent of the cashew trees. The appellate Court has acted within its jurisdiction in granting relief to the respondent no. 1. No infirmity or error of law apparent on the face of the record is apparent and, therefore, the order does not call for any interference.

5. The petition is dismissed. Rule discharged. The suit is directed to be decided expeditiously and preferably within a period of one year from today.

(S.A. BOBDE)
JUDGE.

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